

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**KAREN E. GAPA**

Claimant

VS.

**DOLLAR GENERAL**

Respondent

AND

**DOLGENCORP, INC.**

Insurance Carrier

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Docket No. 1,023,834

**ORDER**

Respondent appeals the April 14, 2006 preliminary hearing Order of Administrative Law Judge Thomas Klein. Claimant was awarded benefits in the form of medical treatment, medical reimbursement, payment of outstanding unpaid medical bills, and temporary total and temporary partial disability.

**ISSUES**

1. Did claimant sustain a compensable injury arising out of and in the course of her employment as a result of a brown recluse spider bite?
2. Should respondent be responsible for medical expenses and unauthorized medical over the \$500.00 statutory limit?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge (ALJ) should be affirmed.

Claimant alleges she was bitten by a brown recluse spider on September 14, 2004, while moving boxes in respondent's store. Claimant testified that on September 14, she

saw a spider on her pants and brushed it off. Claimant does not remember actually being bitten. She finished her shift that day and worked the next day, not experiencing any symptoms until September 16. She sought medical treatment with Earl T. Walter, D.O., on September 17, 2004, and was diagnosed as having a brown recluse spider bite. She then underwent several weeks of treatment for a spider bite to her right thigh.

Claimant acknowledged that she was wearing pants at work. Respondent argues that the expert information from University of Kentucky entomologist Michael F. Potter states a brown recluse spider's fangs are too small to bite through clothes. Therefore, claimant could not have been bitten at the time and in the manner alleged.

Claimant's uncontradicted testimony is that the only place she has been exposed to brown recluse spiders was at work. She also testified that respondent's business was infested with these spiders. Claimant testified about another occasion when she opened a box at respondent's business, only to see brown recluse spiders scurrying out from underneath. Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy.<sup>1</sup>

In workers compensation litigation, it is the claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.<sup>2</sup>

If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act.<sup>3</sup>

The Kansas legislature has clearly expressed an intent to liberally construe the Act for the purpose of bringing employers and employees within the provisions of the Act to provide the protections of the Workers Compensation Act to both.<sup>4</sup>

Here, claimant's uncontradicted testimony is that the only place she has been exposed to brown recluse spiders was at respondent's business. Claimant acknowledges she does not remember being bitten. That, however, is not surprising, as the expert evidence from Mr. Potter is that the bite of a brown recluse may not be felt at the time it is administered. The effects of the bite may not show for several hours.

---

<sup>1</sup> *Anderson v. Kinsley Sand & Gravel, Inc.*, 221 Kan. 191, 558 P.2d 146 (1976).

<sup>2</sup> K.S.A. 44-501 and K.S.A. 2004 Supp. 44-508(g).

<sup>3</sup> K.S.A. 44-501(a).

<sup>4</sup> K.S.A. 44-501(g).

The Board finds, as did the ALJ, that claimant's explanation of how this bite occurred is plausible. Claimant has carried her burden regarding having suffered accidental injury arising out of and in the course of her employment for preliminary hearing purposes.

Respondent also disputes the ALJ's award of medical benefits.

Not every alleged error in law or fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues which are deemed jurisdictional:

1. Did the worker sustain an accidental injury?
2. Did the injury arise out of and in the course of employment?
3. Did the worker provide timely notice and written claim of the accidental injury?
4. Is there any defense that goes to the compensability of the claim?<sup>5</sup>

The Board does not take jurisdiction of disputes regarding medical care on appeal from preliminary hearings. Respondent's appeal on these issues is, therefore, dismissed.

As provided by the Act, these findings are not binding upon a full hearing on the claim but shall be subject to a full presentation of the facts.<sup>6</sup>

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Thomas Klein dated April 14, 2006, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

---

<sup>5</sup> K.S.A. 44-534a(a)(2).

<sup>6</sup> K.S.A. 44-534a(a)(2).

Dated this \_\_\_\_ day of July, 2006.

---

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant  
John A. Pazell, Attorney for Respondent and its Insurance Carrier  
Thomas Klein, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director